

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7970

In Re: Petition of Vermont Gas Systems, Inc.	:
Requesting a Certificate of Public Good	:
Pursuant to 30 VSA 248, authorizing the	:
construction of the “Addison Natural Gas	:
Project” consisting of approximately 43 miles	:
of new natural gas transmission pipeline in	:
Chittenden and Addison Counties, approximately	:
5 miles of new distribution mainlines in	:
Addison County, together with three new gate	:
stations in Williston, New Haven, and	:
Middlebury, Vermont	:

BRIEF OF THE TOWN OF NEW HAVEN

Now comes the Town of New Haven by and through its legal counsel and pursuant to Rule 2.223 of the Board’s Rules of Practice and does hereby submit this brief in support of its position that the Petition of Vermont Gas Systems for a Certificate of Public Good be issued if and only if the CPG requires the project to conform to the conditions described herein.

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I. INTRODUCTION

Vermont Gas Systems, Inc. is a company engaged in the business of transporting, distributing and selling natural gas to residential and commercial businesses in Vermont.

The Town of New Haven is a duly chartered town located in Addison County, Vermont, and is the locus of one of three gate stations proposed for inclusion in the Vermont Gas “Addison Natural Gas Project.” Portions of both distribution pipeline and mainline will pass through the Town of New Haven.

The Town of New Haven does not oppose the issuance of a Certificate of Public Good to Vermont Gas Systems, Inc., for its Addison Natural Gas Project, provided that certain conditions are including in that Certificate relative to the gate house and route location of the project within the Town of New Haven as stated herein. Most particularly, the Town of New Haven wishes to express its concern that noise generated by the gate house be strictly limited, and that post-construction testing be required to ensure compliance with the noise standards imposed.

II. AESTHETICS

Vermont Gas bears the burden of establishing that construction of its facility “will not have an undue adverse effect on aesthetics...[and] the public health and safety[.]” 30 V.S.A. Section 248 (b)(5). “In determining whether a proposed project would have an undue adverse impact on aesthetics, the Board has adopted the Environmental Board’s Quechee test.” Docket No. 7508. Findings and Order, 6/11/2010 at 50.

The two-step Quechee analysis has been summarized by the Board as follows:

“...first, a determination must be made as to whether a project will have an adverse impact on aesthetics and the scenic and natural beauty.” *Id.* citing Docket 7156, Order of 8/8/07 at 64-65. If adverse effects are present, the Board then must determine whether the adverse impact of the project is ‘undue.’ *Id.* at 51. “The adverse effect is considered undue when a positive finding is reached regarding any one of the following factors:

1. Does the project violate a clear, written community standard intended to preserve aesthetics or scenic beauty of the area?
2. Have the applicants failed to take generally available mitigating steps which a reasonable person would take to improve the harmony of the project with its surroundings?
3. Does the project offend the sensibilities of the average person? Is it offensive or shocking because it is out of character with its surroundings or significantly diminishes the scenic qualities of the area?”

Id. “In addition to the Quechee analysis, the Board’s consideration of aesthetics under Section 248 is ‘significantly informed by overall societal benefits of the project.’ *Id.*, citing *In re: Northern Loop Project*, Docket 6792, Order of 7/17/2003 at 28.

The area surrounding the proposed Plank Road Gate Station is “predominantly agricultural with a few rural residential properties. The area largely consists of open agricultural views with unobstructed views north and the intersection, but the residential lots and vegetation south help limit the views.” *Prefiled Testimony of Michael J. Buscher on behalf of Vermont Gas Systems, Inc., December 20, 2013*, Exhibit MJB-2 p. 77.

The Prefiled Direct Testimony of David Raphael on behalf of Vermont Department of Public Service, June 14, 2013, further describes the area as follows:

One key location where there are concerns is at the proposed gate station site in New Haven off of Plank Road. The gate station will be sited in an existing agricultural area, on a field currently planted for corn. It is set off from the background woodlands and accessed from Plank Road via a dirt and gravel farm road. The gate station, despite the presence of the VELCO corridor, will be an incompatible land use and visual element in this agrarian landscape and thus can be considered to have an adverse impact to the aesthetics of the surrounding rural agricultural landscape. *Id. p. 6-7.*

The Town of New Haven has requested by letter to this Board that the proposed Gate Station be aesthetically incorporated into this landscape. The *2-28-13 Supplemental Prefiled Testimony of Steven J. Wark on behalf of Vermont Gas Systems, Inc. Exhibit Petitioner SJW-5(2-28-13)* incorporates this letter into testimony at Page 8, lines 13-14. That letter reads, in pertinent part:

8)With regard to the gate station design, the Town of New Haven requests that it be consistent with design and with the character of the area. In addition, appropriate plantings shall be made to mitigate the visual impact of the gate station.
Id.

A Memorandum of Understanding between Vermont Gas Systems, Inc., and the Addison County Regional Planning Commission dated August 12, 2013, and incorporated by reference into the *Prefiled Testimony and Exhibits of Timothy Bouton on Behalf of the Addison County*

Regional Planning Commission obligations Vermont Gas to “work cooperatively with the legislative body of each municipality to locate site and screen and cost-effectively address the aesthetic impact [sic, *of the*] the gate stations necessary to supply the gas distribution system to the community.” *Id. p. 8 para. 2.*

Conditions on the CPG relative to aesthetic elements pertaining to the Gate Station structures, fencing, hardscape and landscaping, as well as limitations on noise emissions, will ensure that the Gate Station does not adversely affect the aesthetic quality of this area. The Certificate of Public Good for this project should be conditioned on requiring that these design elements are constructed and applied as indicated herein.

Building Elements

The Town of New Haven does not oppose the issuance of a Certificate of Public Good for this project provided that the CPG be conditioned on the inclusion and execution of certain design elements relative to the Plank Road Gate Station intended to make the Gate Station as unobtrusive as possible, including : that the building(s) be a dark earth-tone color; that the dimensions and profile of the structure(s) not exceed those indicated in filings, regardless of change in potential building material; that fencing be a dark chain link, such as a green, brown or black vinyl coated; that gravel and any other hardscape surface material be of a dark color; and that lighting be manually operated, rather than on motion sensors.

The 2-28-13 *Supplemental Prefiled Testimony of John Heintz on Behalf of Vermont Gas Systems, Inc.*, Appendix G-021, Station and Valve Details, includes a technical drawing of the New Haven Plank Road Gate Station. That drawing indicates a fenceline around the Gate Station

structures, crushed stone surfacing immediately surrounding the Gate Station structures, and unspecified Stabilizing Permeable Surface on the drive leading to the Gate Station.

The Prefiled Testimony of Michael J. Buscher on behalf of Vermont Gas Systems, Inc., December 20, 2013, Exhibit MJB-2, states in regards to the building footprint and profile:

The Plank Road Gate Station will include an approximately 55' X 55' fenced yard with a small parking area, an approximately 12' X 32' prefabricated metal meter and regulator building, a 6' X 8' SCADA building, and an approximately 6' X 15' concrete pad on which the pipeline heater will be located. Each enclosure building will be approximately 11' high from ground level to roof peak. All proposed infrastructure is low in profile and limited in size. *Id. p. 79.*

The Town of New Haven understands from communications with Vermont Gas that the company is now anticipating constructing the Gate Station meter and regulator building of concrete blocks, rather than using a prefabricated metal building. Provided that this building material change does not alter the building dimensions or exterior color, the Town has no objection to the alteration.

The Prefiled Supplemental Direct Testimony of David Raphael on behalf of Vermont Department of Public Service, July 17, 2013, Exhibit DR-1, recommends that in regards to all the gate stations, that “any light fixture should provide shielded down lighting... interior surface materials should be gray gravel (as opposed to white stone) and building colors should be a dark gray versus a light or white colored metal siding.” Id. p. 9-10. While Raphael’s testimony initially recommended that lighting be on motion sensors – thus limiting the time lights were on as opposed to placing the lights on timers – his oral testimony of 18 September 2013 amended that recommendation to clarify that the lighting at the Gate Station should be manually operated

– that is, turned on and off by a human flicking a switch – rather than connected to a motion sensor, as in this agricultural area, motion sensors are likely to be triggered unnecessarily by passing animals.

Any Certificate of Public Good issued by the Board for this project should accordingly condition such CPG on the requirements that that the building(s) be a dark earth-tone color; that the dimensions and profile of the structure(s) not exceed those referenced, regardless of change in potential building material; that fencing be a dark chain link, such as a green, brown or black vinyl coated; that gravel and any other hardscape surface material be of a dark color; and that lighting be manually operated and be down-shielded. Post construction review should also be required.

Landscaping

Vermont Gas has substantially amended its landscaping plans for the Plank Road Gate Station after consideration of the aesthetic analysis submitted by David Raphael on behalf of the Vermont Department of Public Service. The Town of New Haven understands that the present landscaping plan for this Gate Station is contained in *Prefiled Testimony of Michael J. Buscher on behalf of Vermont Gas Systems, Inc., December 20, 2013*, Exhibit MJB-2. This landscaping plan is intended to mitigate the visual impact of the gate station within its agricultural landscape setting, and to visually blend it into the woodland edge behind the station. The Town of New Haven does not object to this landscaping plan as indicated provided that post construction and post installation review and ongoing monitoring ensures that the landscaping is installed as represented and that the installations take and thrive; it is not the initial planting but rather the

successful maturation of the landscaping elements that will ensure appropriate mitigation of the visual impact of the structure.

The Prefiled Supplemental Direct Testimony of David Raphael on behalf of Vermont Department of Public Service, July 17, 2013, Exhibit DR-1, further confirms the necessity of post construction monitoring, concluding that, “At the New Haven Gate Station there should be a post construction review ...to ensure the mitigation planting is installed appropriately and effectively screens the station and blends in with the setting. ... Post construction review of all landscape mitigation should be conducted to confirm the installations are completed as envisioned and are sufficient to effectively mitigation the specific locations they are intended to address.” Id. p. 10.

Any Certificate of Public Good issued by the Board relative to this project should condition such CPG on the requirement that landscaping be installed as indicated, and that post construction review occur to ensure successful implementation of the landscaping installations.

Noise

Limitation on noise generated by the Plank Road Gate Station is of primary, critical concern to the Town of New Haven. The Board should condition issuance of a Certificate of Public Good on limitation of noise emissions to no more than 50dB at the gate station fence line, together with post-construction monitoring to ensure compliance with noise limitations.

The Town of New Haven requested by letter to this Board that noise emissions from the Gate Station be limited to 35dB at the gate station perimeter. *The 2-28-13 Supplemental Prefiled Testimony of Steven J. Wark on behalf of Vermont Gas Systems, Inc. Exhibit Petitioner SJW-*

5(2-28-13) incorporates this exhibit into his testimony at Page 8, lines 13-14. The letter reads, in pertinent part:

6) With regard to decibels emitted from any gate station located in New Haven, PSB should require sound studies prior to construction and post construction when the transmission line is in service. Any residence in the vicinity of the gate station shall have pre and post construction sound studies done to ensure there is no sound impact on them.

7) The maximum decibel shall be 35 decibels at the gate station perimeter limit.

Prefiled testimony of John Heintz that same date indicates that the nature of the heating systems to be installed in the Gate Station will produce noise at approximately 50dB at the fenceline.

2-28-13 Supplemental Prefiled Testimony of John Heintz on Behalf of Vermont Gas Systems, Inc., states in pertinent part:

VGS has selected a heater system for the Gate Station that emits very little noise. VGS has calculated that after construction of the Project and during the peak hour of operation, the noise level at each Gate Station will be approximately 50dBA when measured at the fence line. *p. 42 lines 5-8.*

The fence line indicated on the filed Gate Station plans is significantly closer to the Gate Station structures than the perimeter limit. Wark's testimony goes on to note that "The closest occupied structure (a bookstore in Middlebury) to any of our proposed Gate Stations is approximately 150 feet." *Id. p. 42 lines 8-9.* Logically, setting the limit as a measurement at the nearest occupied structure would allow for noise generation at the Gate Station significantly louder than that requested by the Town of New Haven or attested to by Vermont Gas. Noise

limitations included as conditions of the CPG for this project should be set as limits measurable at the fence line—as indicated by Wark’s testimony-- not at the nearest occupied structure.

The Prefiled Supplemental Direct Testimony of David Raphael on behalf of Vermont Department of Public Service, July 17, 2013, Exhibit DR-1, confirms this logic. Raphael states: Given that there is sound associated with this site, and concerns have been raised with regard to the impacts of that sound on the surrounding neighborhood it is recommended that VGS commit to post-construction monitoring of the sound emitted. Monitoring will ensure that a 50dB sound level at the fence line of the Gate Station is correct and that decibel levels at the property lines of surrounding residences do not exceed the PSB precedence of 55dB. This will confirm that there isn’t unacceptable noise qualities associate with this Gate Station...”.

The Prefiled Supplemental Direct Testimony of David Raphael on behalf of Vermont Department of Public Service, July 17, 2013, Exhibit DR-1, further confirms the necessity of post construction monitoring, concluding that, “At the New Haven Gate Station there should be a post construction review to confirm that the sound levels do not exceed the 50dB (decibel level) at the facility fencing perimeter...”. Id. p. 10

Any Certificate of Public Good issued by the Board for this project should accordingly condition that CPG on a limitation of noise emissions from the Plank Road Gate Station to a maximum of 50dB at the fenceline, and require post-construction sound monitoring to ensure ongoing compliance with this limit.

II. ORDERLY DEVELOPMENT OF THE REGION

Under Vermont law, “[n]o company... may in any way being site preparation for or commence construction of any natural gas facility... unless the public service board first finds

that the same will promote the general good of the state and issues a certificate to that effect. 30 VSA 248(a)(3). Before the Board may issue a CPG for an in-state facility it must find that the construction, *inter alia*, “will not unduly interfere with the orderly development of the region with due considerations having been given to the recommendations of the municipal... planning commission[], the recommendations of the municipal legislative bod[y], and the land conservation measures contained in the plan of any affected municipality. *Id.* 248(b)(1).

The Town of New Haven has submitted its indication to this Board of the pertinent requirements of its town regulations, and does not oppose issuance of a CPG provided that the project is constructed in compliance with plans as filed with this Board, as more specifically indicated herein.

Subdivision.

Vermont Gas has not indicated whether it intends to secure the parcel for the Plank Road Gate Station by fee purchase, or by purchase or condemnation of easement. If Vermont Gas intends to create a parcel of land for purposes of siting the Gate Station, the Town of New Haven urges that Vermont Gas comply with local and state subdivision regulations.

Vermont statute exempts utility facility infrastructure from substantive municipal zoning regulation. 24 VSA Section 4413(b) states: A bylaw under this chapter shall not regulate public utility power generating plants and transmission facilities regulated under 30 VSA Section 248.

The language of that statement could be construed to include both zoning and subdivision regulations, as both are adopted pursuant to Title 24 VSA Chapter 117. Unlike zoning regulation, which may address the substantive use of a parcel of land and the location of structures on that parcel, subdivision regulation is content-neutral: It regulates the creation of

parcels of land, not the use to which those parcels are put. Subdivision does not ‘regulate public utility power generating plants and transmission facilities,’ it regulates the creation of a parcel of land.

The Town of New Haven does not seek to restrict Vermont Gas’s use of a parcel of land; they seek compliance with the law regarding the creation of parcels of land. This Board should find that, to comprise a public good, Vermont Gas must seek a subdivision permit from the appropriate municipal panel of the Town of New Haven if Vermont Gas creates a new parcel of land within the Town of New Haven relative to this project.

Pipeline Route and Plank Road Gate Station location.

The Town of New Haven does not oppose the location of the pipeline route provided that route remains, within the Town of New Haven, in the VELCO right-of-way and on the west side of Route 7, and otherwise in the locations indicated in the present filings as of this date.

By letter to the Board on January 22, 2013, the Town of New Haven indicated its approval for this route. This approval was attested to by Steven J. Wark on behalf of Vermont Gas: “...the Transmission pipeline will be moved from North Street to the Velco corridor in New Haven. New Haven requested placement of the transmission pipeline on the west side of Route 7. ... Vermont Gas has accommodated this request.” *2-28-13 Supplemental Prefiled Testimony of Steven J. Wark on behalf of Vermont Gas Systems, Inc. Exhibit Petitioner SJW-5(2-28-13)* The letter containing New Haven’s request for this route was incorporated into Wark’s testimony at Page 8, lines 13-14.

By this same letter to the Board, the Town of New Haven indicated its request that the pipeline be buried at a minimum depth of 4 feet throughout the Town. A *Memorandum of*

Agreement Among Vermont Gas Systems, Inc., The Vermont Agency of Agriculture, Food and Markets, the Vermont Land Trust Inc., and the Vermont Housing and Conservation Board dated 13 June 2013, obligates Vermont Gas to place ‘any transmission line that crosses or is otherwise located upon agricultural lands with at least four feet of cover above the pipe to pre-disturbance surface level.’ *Id.* p. 3. The Town of New Haven concurs with this obligation and requests that it be incorporated as a condition of any CPG issued for this project.

Vermont Gas has improved the location and siting of the Plank Road gate station. The Town of New Haven does not oppose the location for this gate station as indicated on the 2-28-2013 Supplemental Prefiled Testimony of Michael J. Buscher on behalf of Vermont Gas Systems, Inc., Exhibit Petitioner Supplement MJB-2.1, Aesthetic Analysis Report –Supplement. As indicated in that document, the Plank Road Gate Station will be located approximately 600 feet south of Plank Road and 800 feet west of North Street, adjacent to the VELCO electric power lines.

By letter to this Board, the Town of New Haven requested that the Plank Road Gate Station conform to the setback requirements of the Town’s zoning regulations. 2-28-13 *Supplemental Prefiled Testimony of Steven J. Wark on behalf of Vermont Gas Systems, Inc. Exhibit Petitioner SJW-5(2-28-13)* The letter containing New Haven’s request for this route was incorporated into Wark’s testimony at Page 8, lines 13-14.

That letter reads in pertinent part:

10) Construction of a gate station shall adhere to Sections 525 and 545 of the Town of New Haven Zoning Bylaws.

11) Gate station construction shall meet setbacks for the specific standards in the zoning district in which it is located. Please see New Haven Zoning Bylaws Sections 1001, 1001A, 1002, 1002A, 1003, 1003A, (attached).

12) New Haven Zoning Bylaws in Section 1005-A requires that non-residential uses shall have a minimum of a 100 foot setback from Rural Agricultural districts in Sections 1001, 1012, 1003.

If constructed as indicated in the Buscher testimony Exhibit MJB-2.1, the Gate Station will meet the Town's setback requirement, and the Town of New Haven has no objection provided the station is in fact constructed where indicated.

CONCLUSION

When evaluating a project for a Certificate of Public Good, the Board is engaged in a "legislative, policy-making process." *In re Vt.Elec. Power Co.*, 2006 VT 69, Para.6. In the present instance, in regards to the Plank Road Gate Station and the siting of the pipelines through the Town of New Haven, the Town does not object to the Project *provided that* the Project as built is in conformance with the specific design and mitigation measures indicated in the filings as referenced herein. The Town of New Haven would object to any deviation from these measures and requested limitations, particularly in regards to noise emissions from the Plank Road Gate Station.

Respectfully Submitted,

The Town of New Haven
by and through its legal counsel
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CERTIFICATE OF SERVICE

I, Cindy Ellen Hill, do hereby certify that I served the foregoing BRIEF OF THE TOWN OF
NEW HAVEN on the parties by email this date to the Electronic Service List, and by first class
mail to Michael Hurlburt.

Cindy Ellen Hill, Esq.
11 October 2013

